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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZENEIDA PERDOMO, et al.,

Plaintiffs,

v.

CARMEN GARCIA, et al.,

Defendants.

AND RELATED COUNTERCLAIM

No. C 09-05976 JSW

ORDER: (1) DIRECTING PLAINTIFF TO SHOW CAUSE AS TO WHY FEDERAL CLAIMS SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM; (2) CONTINUING HEARING ON MOTION TO DISMISS COUNTERCLAIMS, SETTING BRIEFING SCHEDULE, AND RESETTING HEARING ON PENDING MOTIONS

On December 22, 2009, Plaintiffs Zeneida Perdomo and Biomeda Corporation filed their complaint in this action, in which they assert, *inter alia*, a claim for violations of the Racketeer Influenced and Corrupt Organizations Act, pursuant to 18 U.S.C. § 1962(c) and 18 U.S.C. § 1964, and a claim for civil forfeiture as a result of alleged violations of 18 U.S.C. § 1341 and 18 U.S.C. § 1343. Plaintiffs' remaining claims are state law claims, and, contrary to her allegations, there does not appear to be complete diversity among the parties.

1. Order to Show Cause to Plaintiffs.

Before resolving the pending motions to dismiss, the Court *sua sponte* issues this Order to Show Cause to Plaintiffs, because it is not clear that they have stated viable federal claims. See *Lee v. City of Los Angeles*, 250 F.3d 668, 683 n.7 (9th Cir. 2001). With respect to their Civil RICO claim, Section 1962(c) makes it unlawful "for any person employed by or associated

1 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
2 to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs
3 through a pattern of racketeering activity...." Therefore, in order to state a civil RICO claim, a
4 plaintiff must allege the following four elements: (1) conduct (2) of an enterprise (3) through a
5 pattern (4) of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985).

6 Plaintiffs are HEREBY ORDERED TO SHOW CAUSE as to why the allegations in the
7 Complaint state a viable Civil RICO claim against Defendant Garcia. Plaintiffs are also
8 HEREBY ORDERED TO SHOW CAUSE as to why the allegations in the second claim for
9 relief are sufficient to state a claim. With respect to this claim, Plaintiffs should identify any
10 authority that permits a private party to bring a claim for relief under 18 U.S.C. § 981.

11 Plaintiffs' response to this Order to Show Cause shall be due by no later than July 9,
12 2010, and shall not exceed ten (10) pages. It is FURTHER ORDERED that Plaintiffs shall
13 serve a copy of this Order on Defendant Carmen Garcia, who may file a response to Plaintiffs'
14 response to the Order to Show Cause by no later than July 23, 2010. Ms. Garcia's response also
15 shall not exceed ten (10) pages. If Ms. Garcia does not respond by July 23, 2010, the Court
16 shall deem the matter submitted. If Ms. Garcia files a response, Plaintiff may submit a reply,
17 that shall not exceed seven (7) pages, by no later than July 30, 2010.

18 **2. Pending Motions to Dismiss.**

19 On June 23, 2010, Plaintiffs filed a Motion to Dismiss the Cross-Complaint asserted by
20 Defendants Javad Zolfaghari and Julia Hashemieh ("Cross-Complainants"), which they noticed
21 for hearing on August 13, 2010. It is HEREBY ORDERED that Cross-Complainants'
22 opposition to the motion shall be due on July 9, 2010, and Plaintiffs' reply shall be due on July
23 16, 2010. The hearing is CONTINUED to August 27, 2010 at 9:00 a.m. The Court shall also
24 hear the Motions to Dismiss filed by Defendants U.S. Bancorp, Coldwell Banker LLC, Brenda
25 Olivera, and Public Storage Franchise, Inc. on August 27, 2010 at 9:00 a.m.

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1 If the Court finds any of these matters suitable for disposition without oral argument, it
2 shall notify the parties in advance of the August 27, 2010 hearing date.

3 **IT IS SO ORDERED.**

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5 Dated: June 24, 2010

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE